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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7455 of 2007

Shri Kashinath Jayram Patil ...Petitioner

V/s.

City Industrial & Development
Corporation of Maharashtra Ltd. & anr. ...Respondents

Mr. Bhavesh Parmar for the Petitioner
Mr.K.K.Tated for Respondent no.1

CORAM : B.H.MARLAPALLE,J.
DATED : 29th November, 2007

P.C.

Heard Mr. Parmar, the Learned Counsel for the Petitioner who is the Complainant before the Labour Court in comp(ULP)No. 66/2007. In the said complaint filed under item 1 of Schedule IV of the MRTU & PULP Act, 1971 he filed an application under Section 30(2) of the said Act and it was allowed by the Learned Judge of the Labour Court on 9-7-2007. The Complainant was directed to be retained in service and to pay him wages regularly in accordance with the existing service conditions as per the Order dated 9-7-2007. The employer challenged this order in Revision Application (ULP) No. 65/2007 and the Learned Member of the Industrial Court was pleased to allow the said application as per his judgement and order dated

28-9-2007. The order passed by the Labour Court on 9-7-2007 below Exh. U-2 came to be set aside and consequently the complaint will have to be decided by the Labour Court on merits. The Petitioner is aggrieved by this Order passed by the Industrial Court allowing the Revision Application.

2. By notification dated 8-5-2007 issued by the management, the Petitioner was informed that he would retire on 31-5-2007 on reaching the age of superannuation at 58 years and, therefore, he approached the Labour Court with the complaint of unfair labour practice apprehending termination of service. The employer contended that the Complainant himself has declared his date of birth as 1-6-1949 and the same was verified with the Matriculation certificate. The Complainant had joined as a clerk on 8-7-1975 and was promoted to the post of Accountant in the year 1984. He claimed that his date of birth was not 1-6-1949 and it was infact 23-9-1950. The Complainant claimed that such an application for correction of date of birth was submitted by him on 7-7-2000 and the employer had not acted upon it. However, the employer contended that by issuing a letter dated 6-7-2006 he was informed that for his retirement, the date of birth which is mentioned in the School Leaving Certificate shall be accepted. It is, thus, clear that only after the notification dated

8-5-2007 was published, the Complainant approached the Labour Court and that too at the fag end of his service as he was due to retire on 31-5-2007. There was no justification by the Learned Judge of the Labour Court to exercise his discretion and pass an order under section 30(2) of the Act which must infact be based on a prima-facie finding of unfair labour practice on the part of employer. The Industrial Court, therefore, rightly stepped in and corrected the gross error committed by the Labour Court in Revision Application filed under Section 44 of the said Act.

3. Hence, no interference is called for in the view taken by the Learned Member of the Industrial Court in the impugned order and there is no case made out to entertain this petition under Article 227 of the Constitution.

4. Petition is rejected summarily. Ad-interim order passed earlier stands vacated.

[B.H.MARLAPALLE,J.]